

# ORDINANCE 1621

## **AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RELATING TO FIRE IMPACT FEES; REPEALING NORTH BEND ORDINANCE NO. 1268; AMENDING NORTH BEND MUNICIPAL CODE CHAPTER 17.34; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the City of North Bend is authorized by Chapter 82.02 RCW to require new growth and development within the City to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees; and

**WHEREAS**, pursuant to such authority and the police powers of the City, on March 20, 2007, the City Council adopted Ordinance No. 1268 establishing fire protection impact fees; and

**WHEREAS**, Ordinance No. 1268 was not previously codified in the North Bend Municipal Code upon adoption, and the City Council desires to codify those provisions for the convenience and reference of City staff, citizens, and developers; and

**WHEREAS**, in the process of such codification, certain housekeeping amendments are necessary to incorporate information previously contained in the attachments to Ordinance 1268; and

**WHEREAS**, in the process of such codification, the City desires to update certain provisions of the fire protection impact fee ordinance to conform to current state statutes and City ordinances;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Repealer.** City of North Bend Ordinance No. 1268, as amended by Ordinance No. 1374, is hereby repealed in its entirety.

**Section 2. NBMC 17.34 (Fire Impact Fees), Amended.** North Bend Municipal Code Chapter 17.34 (Fire Impact Fees) is hereby amended to read as set forth in the attached **Exhibit A**, which is incorporated herein by this reference.

**Section 3. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or

otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 4. Effective Date.** This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 4<sup>TH</sup> DAY OF APRIL, 2017.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Kenneth G. Hearing, Mayor**

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**Michael R. Kenyon, City Attorney**

Published: April 12, 2017  
Effective: April 17, 2017

**ATTEST/AUTHENTICATED:**

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**Susie Oppedal, City Clerk**

## EXHIBIT A

### Chapter 17.34 FIRE IMPACT FEES

#### Sections:

<b>17.34.010</b>	<b>Purpose.</b>
<b>17.34.020</b>	<b>Definitions.</b>
<b>17.34.030</b>	<b>Fee imposed – Applicability.</b>
<b>17.34.040</b>	<b>Exemptions.</b>
<b>17.34.050</b>	<b>Fire protection impact fee program elements.</b>
<b>17.34.060</b>	<b>Fee calculation methods.</b>
<b>17.34.070</b>	<b>Fee collection.</b>
<b>17.34.080</b>	<b>Fee adjustments – Administrative fee.</b>
<b>17.34.090</b>	<b>Fire protection impact fee accounts and refunds.</b>
<b>17.34.100</b>	<b>Processing.</b>
<b>17.34.110</b>	<b>Other authority.</b>
<b>17.34.120</b>	<b>Appeals.</b>

#### **17.34.010 Purpose.**

The City Council of the City of North Bend finds and determines that growth and development activity in the City will create additional demand and need for fire protection facilities in the City, and the Council finds that growth and development activity should pay a proportionate share of the cost of such facilities needed to serve that growth and development activity. Therefore, pursuant to the Growth Management Act (Chapter 36.70A RCW), and RCW 82.02.050 through RCW 82.02.100, which authorize cities to impose and collect impact fees to partially fund public facilities to accommodate new growth, the Council adopts this chapter imposing fire protection impact fees for fire protection facilities as set forth in NBMC 17.34.070. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the Council in establishing fire protection impact fees.

#### **17.34.020 Definitions.**

For the purposes of this Chapter, the following terms shall have the meanings ascribed below:

- A. Affordable Housing: Housing is considered “affordable” to a family if it costs no more than thirty percent (30%) of the family’s income. The income groups that are the focus of affordable housing are low and moderate income families.

1. Low Income: A family earning between zero percent (0%) and fifty percent (50%) of the King County median household income.
  2. Moderate Income: A family earning between fifty percent (50%) and eighty percent (80%) of the King County median household income. “Median income” means the median income for the Seattle metropolitan statistical area (King County), as most recently determined by the Secretary of Housing and Urban development (HUD) under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under said Section 8(f)(3) are terminated, median income determined under the method used by the Secretary prior to such termination.
- B. Average Unfunded Cost: That portion of the average cost of facilities that the City cannot foreseeably finance from any and all public revenue sources available to it based on a multiyear fiscal projection found in the capital facilities element of the Comprehensive Plan.
- C. Capital Facilities Element: That capital facilities plan adopted by the City Council as part of the City’s Comprehensive Plan, and its amendments.
- D. Comprehensive Plan: The City of North Bend Comprehensive Plan as currently adopted and as may be subsequently amended.
- E. Conditions of Approval: As they apply to fire protection impact fee evaluations, those conditions necessary to ensure that the proposed development will not cause the fire protection Level of Service to fall below the standards adopted in the Comprehensive Plan. The conditions of approval shall be binding upon the approval of any permit application for which this chapter is applicable as described in NBMC 17.34.030.
- F. Development: Any construction, reconstruction, or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that requires review and approval of a development permit.
- G. Development Permit: Includes, but is not limited to a building permit or a land use application, or any written authorization

from the City that authorizes the commencement of development.

- H. Director: The Director of the Department of Community and Economic development or his/her designee.
- I. Financial Commitment: Any form of binding and enforceable financial obligation that is acceptable to the City, and provided to the City at the time of development approval.
- J. Fire Protection Facilities: Includes all publicly owned apparatus and buildings within the City limits that are used for fire protection and/or emergency response and aid.
- K. Fire Protection Impact Fee: The payment of money imposed upon development as a condition of approval of a development permit to pay for fire protection facilities needed to serve new growth and development, and that is reasonably related to the additional demand and need for facilities created by the new development, that is a proportionate share of the costs of the facilities, and that is used for facilities that reasonably benefit the new development. "Fire Protection Impact Fee" does not include a reasonable permit or application fee.
- L. Level of Service (LOS): The relationship between fire protection facilities and service provision within the City, as specified in the City's Comprehensive Plan.
- M. Proportionate Share: That portion of the cost of public facility improvements and facilities that are reasonably related to the service demands and needs of new development. For any particular development, the proportionate share will depend on the type and size of the development, and location within the City. The proportionate share will be calculated by the methods set forth in the rate study ~~attached Exhibit A, which is incorporated herein by reference as if set forth in full.~~
- N. Rate Study: The rate study prepared for the City by Henderson Young & Company on July 11, 2006, a copy of which is on file with the City Clerk, upon which the fee schedule contained in NBMC 17.24.070 is based.
- O. Service Area: The geographical area in which a defined set of fire protection facilities provide service to development within the area. For the purposes of this ordinance, the service area shall be the entire area within the City limits of North Bend.

**17.34.030 Fee imposed – Applicability.**

There is imposed, and shall be collected from every person who applies for a development permit, a fire protection impact fee, in an amount as set forth in NBMC 17.34.070. The provisions of this Chapter apply to all applications for development permits made on or after March 20, 2007, and to all development permits that have not received final approval by the same date.

**17.34.040 Exemptions.**

The following development is exempt from the requirements of this Chapter:

- A. Affordable Housing. A development permit for affordable housing, which includes low and moderate income, as defined in NBMC 17.34.020(A), shall not be assessed a fire protection impact fee as follows:
  - 1. As a condition of receiving an exemption under this section, the owner shall execute and record in King County's real property title records a City-drafted lien, covenant, or other contractual provision against the property that provides that the proposed housing unit or development will continue to be used for low or moderate income housing and remain affordable to those households for a period of not less than thirty years. The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners and assigns.
  - 2. Any claim or request for an exemption under this section shall be made no later than the time of application for a building permit. If a building permit is not required for the development, then the claim shall be made when the first development permit is applied for. Any claim not made when required by this section shall be deemed waived.
- B. Accessory Dwelling Units. A development permit for an accessory dwelling unit, as defined in NBMC 18.06.030, shall not be assessed a fire protection impact fee.
- C. Change of Use. A development permit for a change of use that has less impact, as determined by the Director, than the existing use shall not be assessed a fire protection impact fee.
- D. City Projects. A development permit for a City project shall not be assessed a fire protection impact fee.

- E. Home Occupations. A development permit for a home occupation, as defined in NBMC 18.06.030, shall not be assessed a fire protection impact fee.
- ~~F. Pending Development Permit. An application for a development permit shall not be assessed a fire protection impact fee if one or both of the following has occurred: 1) the City and applicant have negotiated fire protection mitigation prior to March 20, 2007; or 2) the applicant has provided fire protection mitigation prior to March 20, 2007.~~
- F. Sprinklered Single-Family Home. A building permit for a single-family home with an approved and installed residential fire sprinkler system shall not be assessed that portion of the fire protection impact fee attributed to fire incident life cost of all apparatus and station.

**17.34.050 Fire protection impact fee program elements.**

- A. The City shall impose and collect fire protection impact fees on every development permit within the service area, except as provided in NBMC 17.34.040.
- B. Any fire protection impact fee imposed shall be reasonably related to the impact caused by the new development and shall not exceed a proportionate share of the cost of fire protection facilities that are reasonably related to the new development.
- C. The fire protection impact fee imposed may include costs for Fire Protection Facility improvements previously incurred by the City to the extent that new development will be served by the previously constructed improvements, provided that such fee shall not be imposed to correct any system improvement deficiencies.
- D. The fire protection impact fee imposed for any development shall be calculated and determined by the procedures established by this Chapter and based on the methods set forth in the rate study.
- E. In computing the fee applicable to a given development, credit shall be given for the fair market value, measured at the time of dedication, for any dedication of land for, improvements to, or new construction of any fire protection facilities that are identified in the capital facilities element and that are required by the City as a condition of approving the development.

- F. Fire protection impact fees shall be used for fire protection facilities that will reasonably benefit the new development, and only those fire protection facilities addressed by the City's capital facilities element of the Comprehensive Plan.

**17.34.060 Fee calculation methods.**

- A. Each development application shall mitigate its impacts on the City's fire protection facilities by payment of the fee that is based on the type of land use and square footage of the development, and proportional to the cost of Fire Protection Facility improvements necessary to serve the needs of growth.
- B. All data and other information necessary to determine fire protection impact fee amounts will be made available to the public. Data such as apparatus and building needs, emergency service requests, and facility improvement projects and costs, and related fee schedules will be updated as necessary. Forms and procedures will be established administratively.

**17.34.070 Fee collection.**

At the time of application for a development permit, the fire protection impact fee shall be calculated based on the fee schedule set forth below, ~~established in the attached Exhibit B, which were calculated based upon the study and calculations as set forth in Exhibit A,~~ as may be modified to promote economic development;.

<u>Land Use</u>	<u>Impact Fee</u>
<u>SFR and duplex</u>	<u>\$622.25 per unit</u>
<u>Multi-family</u>	<u>\$853.42 per unit</u>
<u>Motel/hotel/resort</u>	<u>\$0.28 per square foot</u>
<u>Nursing home</u>	<u>\$4.00 per square foot</u>
<u>Medical/dental</u>	<u>\$4.00 per square foot</u>
<u>Office</u>	<u>\$0.20 per square foot</u>
<u>Retail</u>	<u>\$0.64 per square foot</u>
<u>Leisure activities</u>	<u>\$1.00 per square foot</u>
<u>Restaurant</u>	<u>\$1.00 per square foot</u>
<u>Industrial/manufacturing</u>	<u>\$0.20 per square foot</u>
<u>Church/non-profit</u>	<u>\$0.39 per square foot</u>

<u>Education</u>	<u>\$0.81 per square foot</u>
<u>Special public facilities</u>	<u>\$3.12 per square foot</u>

No development permit shall be issued until the fire protection impact fee has been paid in full by the applicant; provided, that payment of fees may be phased if the development permit for the development is also phased. The fire protection impact fee shall be collected by the City, and maintained in a separate account, as required by NBMC 17.34.090. Fire protection impact fees may be paid under protest in order to obtain a development permit or other development approval.

**17.34.080 Fee adjustments – Administrative fee.**

- A. Upon payment by the applicant of a \$100.00 administrative fee, fire protection impact fees calculated by the City may be adjusted by the Director, in any of the following circumstances:
  - 1. The applicant demonstrates that a fire protection impact fee assessment was improperly calculated; or
  - 2. The applicant provides studies and data that, when considered, suggest that adjustment of the fire protection impact fee would be appropriate; provided, that the study is supported by a data base adequate for the conclusions in such study, the study is prepared using generally accepted methods of planning, engineering, and financial analysis and the study is performed by a person with qualifications and experience in the costs, benefits, and financing of public facilities; or
  - 3. Unusual circumstances exist that, when considered, suggest that imposition of the standard fire protection impact fee would be unfair.
- B. The Director shall consider the documentation submitted by the applicant, but is not required to accept such documentation that the Director reasonably deems to be inaccurate or unreliable.
- C. Any appeal of the decision of the City with regard to fire protection impact fee amounts shall follow the process for the appeal of the underlying development permit, as set forth in the NBMC 17.34.120 and other provisions of the North Bend Municipal Code.

**17.34.090 Fire protection impact fee accounts and refunds.**

- A. Fire protection impact fee receipts shall be earmarked specifically and retained in a special interest-bearing account established by the City solely for fire protection impact fees. All interest shall be retained in the account and expended for the purpose or purposes for which said fees were imposed. Annually, the City shall prepare a report on the source and amount of all fire protection impact fees collected, interest earned, and the fire protection facilities that were financed in whole or in part by said fees.
- B. Fire protection impact fees shall be expended by the City only in conformance with the capital facilities element of the Comprehensive Plan.
- C. Fire protection impact fees shall be expended or encumbered by the City for a permissible use within six years of receipt by the City, unless there exists an extraordinary or compelling reason for said fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the City.
- D. The current owner of property on which a fire protection impact fee has been paid may receive a refund of such fees if the City fails to expend or encumber the fees on fire protection facilities within the service area within six years of receipt of the fees by the City. In determining whether fire protection impact fees have been encumbered, such fees shall be considered encumbered on a first in, first out basis. The City shall notify potential claimants by first-class mail deposited with the United States Postal Service at the last known address of the claimants.
- E. An owner's request for a refund must be submitted to the City in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later. Any fire protection impact fees that are not expended or encumbered by the City in conformance with the capital facilities element within these time limitations, and for which no application for a refund has been made within this one year period, shall be retained and expended consistent with the provisions of this Section. Refunds of fire protection impact fees shall include interest earned on such fees.
- F. Should the City seek to terminate any or all fire protection impact fee requirements, all unexpended or unencumbered

funds, including interest earned, shall be refunded pursuant to this Section. Upon the finding that any or all fire protection impact fee requirements are to be terminated, the City shall place notice of such termination and availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the City, and must be expended by the City consistent with the provisions of this ordinance. The notice requirements set forth above shall not apply if there are no unexpended or unencumbered balances within the account being terminated.

- G. An applicant may request and shall receive a refund, including interest earned on the fire protection impact fees, when:
  - 1. The applicant does not proceed to finalize the development; and
  - 2. No impact on the City has resulted. “Impact” shall be deemed to include cases where the City has expended or encumbered the fire protection impact fees in good faith prior to the application for refund. In the event that the City has expended or encumbered the fire protection impact fees in good faith, no refund shall be forthcoming; provided, however, within a period of three years, if the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit. The owner must petition the City and provide receipts of fire protection impact fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The City shall determine whether to grant a credit, and such determinations may be appealed by following the procedures set forth in NBMC 17.34.120.
- H. Interest due upon the refund of fire protection impact fees required by this Chapter shall be calculated according to the average rate received by the City on invested funds throughout the period during which the fire protection impact fees were retained.

**17.34.100 Processing.**

The City shall determine any applicable fire protection impact fees as a normal part of processing a development permit.

**17.34.110 Other Authority.**

Nothing in this Chapter is intended to limit the City's authority under the State Environmental Policy Act or any other source.

**17.34.120 Appeals.**

A fire protection impact fee may be appealed under the appeal process for the underlying development permit set forth in the North Bend Municipal Code. Where no other administrative appeal process is available, an appeal may be taken to the hearing examiner using the appeal procedures for variances.